1950

State of Utah v. Robert C. Lawrence : Brief of Appellant

Utah Supreme Court

D. H. Oliver; Attorney for Appellant;
Clinton D. Vernon; Attorney for Respondent;

7574

IN THE SUPREME COURT OF UTAH

**********O**********

STATE OF UTAH,
Plaintiff & Respondent,
vs
ROBERT C. LAWRENCE,
Defendant & Appellant.

CASE No. 7574

**********O**********

APPELLANT'S BRIEF

********O********

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CASES CITED

IN THE SUPREME COURT OF UTAH

STATE OF UTAH,
Plaintiff
& Respondent,

vs

Case No. 7574

ROBERT C. LAMUNYON,
Defendant
& Appellant.

BRIEF OF APPELLANT

STATEMENT

The defendant was convicted in the Third District Court of Salt Lake County of the crime of Grand Larceny and sentensed to a term of from one to ten years in the Utah State Prison, and to reverse his conviction and sentense, he prosecutes this appeal.

To reverse the judgment, the defendant relies on the following:

POINTS

1. A conviction for Grand Larceny can not stand where there is no evidence as to

the value of the property stolen.

2. Courts can not take judicial notice of the value of any particular article or service.

3. No person shall be twice put in jeopardy for the same offense.

ARGUMENT

Point 1.

A CONVICTION FOR GRAND LARCENY CAN NOT STAND WHERE THERE IS NO EVIDENCE OF THE VALUE OF THE PROPERTY STOLEN.

Nelter vs State, 198 NW 191
Slackwell vs State 56 P2nd 214
Holland vs State, 238 P 454
State vs Harris, 267 SW 802
State vs Jenkins, 246 [illegible] 911
People vs Leach, 290 P 131
Utah Code 1943, 103-36-4

The defendant was charged with the theft of one certain 1947 Ford Automobile, same being of a value in excess of $50. (R6).

At the close of all the evidence and after both sides had rested, the defendant made the following motion,

> "The defendant moves the court to direct the jury to find the defendant not guilty upon the ground and for the reason that there is no evidence whatsoever in the entire record as to the value of this automobile."(R106).

After remarks by counsel, the court said:

> "The jury will be instructed that the value of the automobile is more than $50.00 (R106).

It is an elementary rule in criminal law that the burden is upon the State to prove each element of the crime charged by evidence, and beyond a reasonable doubt. It is also essential in grand larceny cases in Utah to prove the property alleged to have been stolen had a value in excess of $50. Utah Code 1943, 103-36-4.

In discussing the point here involved, the Supreme Court of Oklahpma, in Blackwell vs State said:

> "It has long been the rule of the courts that without proof of the value of the property stolen, there can be no conviction for larceny. It is essential to prove the value of the property in order to establish the grade of the offense and the penalty to be imposed. In the absence of any evidence on the subject of value, the court nor the jury could not indulge in presumptions to support the ommission. It is not neccessary that the goods alleged to have been stolen be proved to be the value charged in the indictment, but it must show that they are

of some value."

In State vs Jenkins, the court disposed of the question with this terse statement:

> "A conviction for grand larceny can not stand where there is no evidence of the value of the goods stolen."

In Holland vs State we find:

> "There are some authorities that hold that it is necessary neither to allege nor prove value in larceny cases, except for the purpose of fixing the degree of the crime. In this case, however, there was no proof offered to show the value of the watch alleged to have been stolen, and the evidence failed to show that the watch in question was taken from the person of the owner as alleged.".

To the same effect are the other cases cited herein and the authorities seem to be unanimous throughout this country.

Point 2.

THE COURTS CAN NOT TAKE JUDICIAL NOTICE OF THE VALUE OF ANY PARTICULAR ARTICLE OR SERVICE.

Telephone Co. vs DeGray, 53 At 200
Van Wagoner vs Whotmore, 199 P 670
Slackwell vs State 56 P2nd 914
16 Cyc 858
31 CJS 701

In Telephone C. vs DeGray, the Supreme Court of N.J. said:

> :There is a clear distinction between an instruction which permits jurors to use the knowledge and experience which they possess as inteligent men, in weighing the evidence or testing its creditability, and an instruction which permits them to apply their personal knowledge and experience to the determination of the issues in the case."

In Van Wagoner vs Whitmore, our court said:

> "This court cannot take judicial notice of the fact, or assume as a matter of common knowledge, that the land would not produce two tons of lucern per acre without irrigation, or that its market value when baled, would not be $15.00 per ton....."

Slackwell vs State:

> "In the absence of any evidence on the subject of value, the court nor the jury could not indulge in presumptions to support the ommission."

Beginning on page 849 16 Cyc, the author begins his discussion of the subject of Judicial Notice wherein is a thorough treatise on what may, and what may not be

judicially noticed. The same topic is treated under the title of Evidence in 31 CJS and other text writters are unanimously in accord in holding that courts can not take judicial notice of the value of specific items of personal property.

Point 3.

NO PERSON SHALL BE TWICE PUT IN JEOPARDY FOR THE SAME OFFENSE

State vs Hows, 87 P 163
State vs Gowan, 182 SE 159
U,S. vs Olmstead, 5 Fed 2nd 712
U.S. Constitution, Amdt V
Utah Constitution, Art I Sec 12

In State vs Hows our court said:

> "The jury having been empaneled and sworn to try the case, the defendant was thereby placed in jeopardy and cannot again be tried for the crime charged in the information, or for any offense included therein."

U.S. vs Olmstead:

> "A judgment is a bar to subsequent prosecution for any offense which could have been proven under the indictment."

In State vs Gowan the defendant moved for a dismissal before the state had rested

and upon a subsequent prosecution, he was convicted without objection and on appeal the court ruled that the dismissal was brought about by the defendant, before the state had produced all of its evidence, and proceeded to the second trial without objection until after the conviction, and for these reasons he could not complain. This case is cited for the express purpose of emphasizing the procedure followed in the case at bar.

Now lets examine the record: The defendant was duly charged in the City Court (R5), and arraigned on May 6th, 1950, a preliminary hearing held and the defendant bound over to the District Court for trial, (R2). Pursuant thereto, the District Attorney filed a valid Information, (R6). To this information the defendant pleaded Not Guilty, (R6). In due course a jury was duly empaneled to try the issues, (R25). A full and complete trial was held, evidence introduced on behalh of

both parties, both parties rested and the court instructed the jury, (R25 to 111).

This record discloses jurisdiction by the court of both, the offense charged and the person of the defendant.

The State had its day in court. It was incumbent on the State to prove its entire case while it was then trying the case. It even could have reopened its case and supplied the lacking evidence after it was called to its attention that such proof had not been produced; it failed to do so, but to the contrary, elected to rely upon the record and the evidence as it then stood, and purposely refused to produce the required evidence, and in this the defendant contends that a second trial is exactly what the framers of both constitutions intended should not be done. In other words, the process of trial and failure and then try again is expressly prohibited when the life

or liberty of a human being is at stake.

This case is distinguishable from that line of authority which hold that htere is no jeopardy in cases where the court had no jurisdiction of the subject matter or the defendant, or where there is no valid complaint or information upon which the court can proceed. Nor is the rule applicable as stated in the Gowan case where the difficulty was brought about on motion of the defendant himself.

We contend that as a matter of law the defendant had a legal right to rely on the lack of proof on behalf of the State, and until the State established a prima ficia case against him he was entitled to an acquital without making any affirmative defense.

CONCLUSION

In conclusion, lets say a word about the status of the defendant. He stands convicted and sentensed on a charge which the State has failed to support by sufficient evidence,

at least as to grand larceny. We submit tahe under the evidence, there was sufficient evidence to convict for petit larceny, Utah Code 1943, Section 103-36-5, but the State repudiated this statute at the trial and insisted on whole hog or nothing, (R 111, Instruction No.9).

Exparte McClure, 118 P 591, was a case wherein the petitioner had been legally and lawfully convicted of disturbing the peace and given an excessive sentense, and the court held that the trial court had no jurisdiction to impose a sentense not provided for by statute and discharged the petitioner. Our own court recognized this rule in Connor vs Pratt, 112 P 399, and set aside the excessive portion of the sentense and remanded the petitioner to serve the valid portion of the sentense, In Exparte Moon Fook, 12 P 803, the petitioner was discharged when it appeared too late to impose the proper sentense.

In Exparte Tana, 91 P 137, the petitioner was ordered out of the State Prison to the County Jail where he should have been sentensed in the first instance.

In the we respectfully submit that upon the choice of the State, the defendant should be discharged forthwith; or second, in the event this court does not feel disposed to accept the challenge of the State, then the defendant should be remanded to the Sheriff of Salt Lake County to complete a term of six months from June 24th 1950, or if six months have already expired, he should be discharged. (R 16, 105-35-4).

Respectfully submitted,

D.H. Oliver

Attorney for Appellant.